

**OFFICIAL STATEMENT OF THE
SANTEE SIOUX NATION OF NEBRASKA**

**GOVERNMENT-TO-GOVERNMENT CONSULTATION
BEFORE THE
NATIONAL INDIAN GAMING COMMISSION**

JULY 18, 2006

I would like to thank the Commission for holding these government-to-government consultations. By engaging in such consultations, the NIGC is reaffirming our tribal sovereignty at the same time as acknowledging the unique relationship that tribes possess with the United States.

The Santee Sioux Nation's homeland is located in rural northeast Nebraska. And as this Commission is aware, this tribe has fought long and hard to engage in viable economic development projects to better the lives of our members. Class II gaming has been one of the few successful businesses which the tribe has been engaged in. Clearly Congress recognized the unique position of Indian tribes when it passed the Indian Gaming Regulatory Act.

Since its inception, there have been many years of successful growth for Indian tribes as a result of IGRA. However we are concerned that with the introduction of these new regulations, that we are taking steps backward from the original recognition of tribal sovereignty in IGRA.

The Santee Sioux Nation is opposed to the proposed regulations because we believe that the current regulations will enable our tribe to continue with a successful Class II gaming operation, which allows the tribe to continue to fund important tribal programs. If the regulations are passed, as currently written, the Santee will lose considerably, from having to discontinue play on games the tribe has already invested considerable revenue in and which are enjoyed by the patrons, as well as nullify hard fought legal victories just to get what little we have today. We are realistic and understand the amount of time and effort expended on these regulations; however, we still feel strongly that the NIGC is taking these steps to alleviate an ongoing intergovernmental battle with the Justice Department.

I. Proposed Changes to "Electronic or Electromechanical Facsimile"

In the Federal Register notice are proposed changes to the definition of "electronic or electromechanical facsimile of any game." 71 Fed. Reg. 30232 (May 25, 2006). Specifically, the Commission indicates that the definition of "electronic or electromechanical facsimile" "has been misconstrued by some allowing for bingo facsimiles" and therefore the Commission offers a proposed change in the definition to "clarify the law." The Santee Sioux Nations believes that the current definition is working. Further, several circuit courts of appeals have rejected the very argument the NIGC is attempting to make into law. Specifically, the Santee expended millions of dollars in a successful defense of its rights to operate this type of game.

By proposing such an amendment, the NIGC seems to be ignoring court precedent just to satisfy the anti-gaming faction at the DOJ. Under IGRA, Indian tribes are expressly permitted to operate Class II gaming with the aid of "electronic, computer or other technologic aids." 25 U.S.C. § 2703(7)(A). The Congressional report accompanying IGRA explained that Congress intended that tribes be permitted to utilize modern technology in conjunction with Class II gaming in order to maximize player participation and tribal economic development. Sen. Rep. No. 100-446, *reprinted in* 1988 U.S.C.C.A.N. 3071, 3075 (Aug. 3, 1988).

The gaming that our tribe currently offers has consistently been upheld by the courts to be Class II games and not facsimiles prohibited under IGRA. The NIGC's proposed amendments will bring Class II gaming, as the Santee know it, to a halt and undermine the Congressional intent of IGRA.

II. Classification Standards and Class II/Class III Demarcations

The NIGC proposes that these regulations are necessary because of advancements and improvements in technology and as a result, have blurred the Class II/Class III distinction and made it difficult to classify these games when played electronically.

The only ones that seem to have trouble making this distinction are the DOJ and the NIGC because the courts and the tribes are clear on the differences. In the experience of the Santee Sioux Nation's Ohiya Casino, there is no indication or evidence to suggest that the patrons are confused.

The proposed changes are extremely restrictive and would make the continued use of existing machines on the Santee reservation obsolete. This will have a dramatic and profound effect on the tribe's continued ability to fund vital government functions. This is conjunction with ongoing federal Indian budget cuts; the outlook for the Santee people is bleak.

A specific concern of the Santee is the mandatory changes with regard to one-touch (auto-daub) bingo game systems. This would completely eviscerate Class II gaming and therefore should be completely removed from the proposal entirely.

The proposed rule also provides for an approval process and verification of electronic and computer or other technologic aids classifications. Upon submission to an independent lab, only the NIGC Chairman is permitted to object to the lab's findings. This leaves the tribes without any form of due process and should be removed from the regulations entirely.

III. Comment Period

Because the NIGC will be submitting technical standards also for Class II games, we ask the NIGC to extend the comment period for the proposed rules for Class II definitions and classifications until the technical standards are released. This will provide an opportunity for tribal representatives to read the documents together and gage the full effect of an NIGC proposal.

IV. Conclusion

The Santee Sioux Nation urges the NIGC to reconsider the proposed regulations. While we understand the intent behind such regulations, we believe that these proposed regulations impose stifling restrictions that will ruin a moderately successful Class II gaming establishment.